

10-2-2014

Things I learned from a very small fish (TEDxBeaconStreet presentation)

Zygmunt J.B. Plater

Boston College Law School, plater@bc.edu

Follow this and additional works at: http://lawdigitalcommons.bc.edu/darter_materials



Part of the [Environmental Law Commons](#), [Natural Resources Law Commons](#), and the [Water Law Commons](#)

Digital Commons Citation

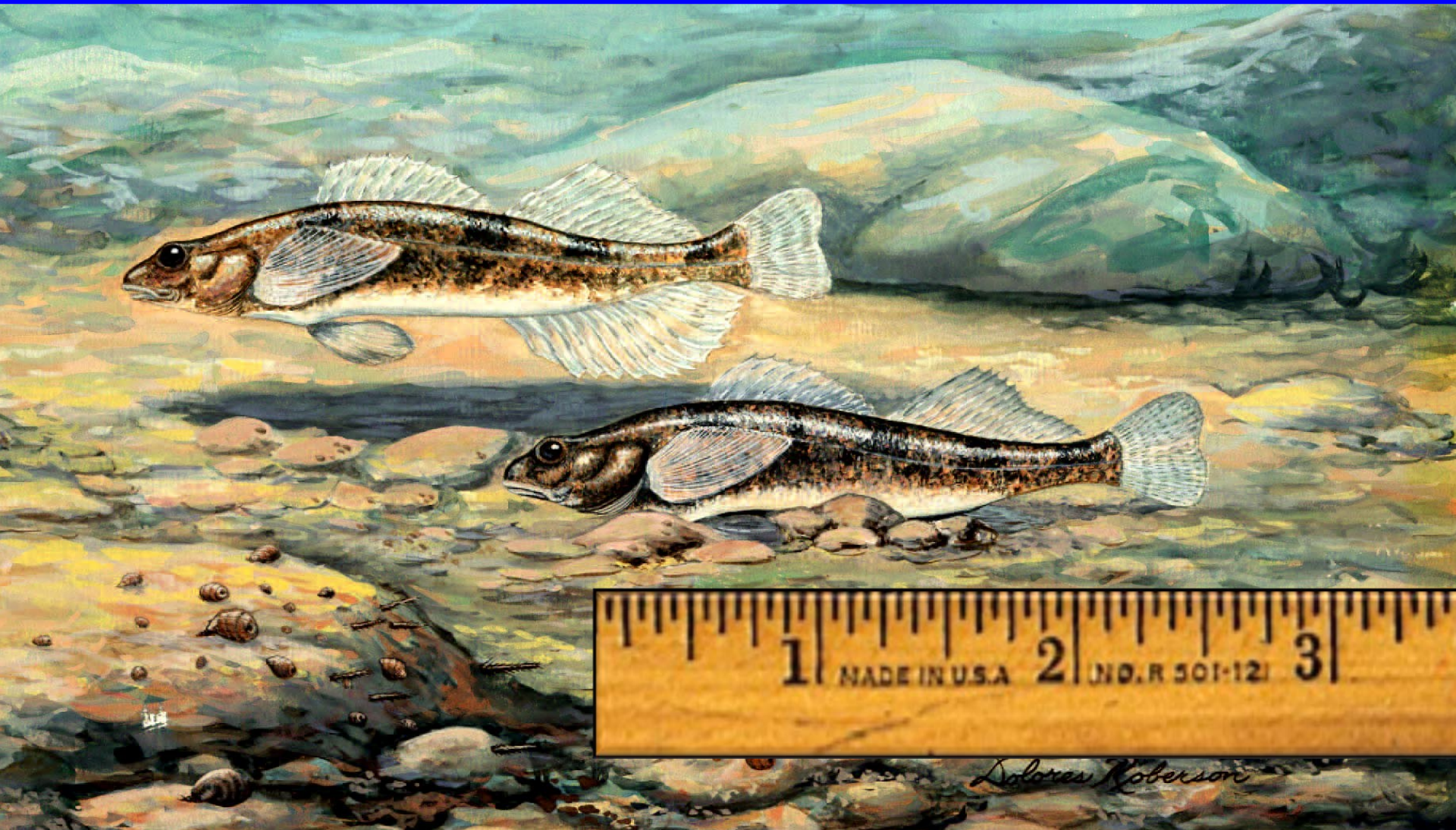
Plater, Zygmunt J.B., "Things I learned from a very small fish (TEDxBeaconStreet presentation)" (2014). *Snail Darter Documents*. Paper 65.

http://lawdigitalcommons.bc.edu/darter_materials/65

This Archival Material is brought to you for free and open access by the The Snail Darter and the Dam at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Snail Darter Documents by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Things I Learned

from a very small fish



“Fringe lunatics!” *(Sean Hannity)*

“The same people who struggle to save the snail darter bless the Pill...and defend abortion.” *(Allan Bloom)*

They are worried about the snail darters and the bark on the tree and the ozone. They go crazy.... *(Roger Ailes, Fox News)*

“It’s time to take America back: It seems everybody’s got a right to their habitat -- from the snail darter to the spotted owl to the fairy shrimp... *except* the habitat of U.S. citizens. Their property, their homes, their dwellings, their ‘eco-systems’ are up for grabs by any and every government agency and bureaucrat for any and every reason.” *(National Review)*

“The Snail Darter has sort of become the shorthand for overregulation in this country.” *(Rep. Devin Nunes, (R), California)*

"Fringe lunatics!"

(Sean Hannity)

"Homosocialists!..." *(Rush Limbaugh)*

**They are worried about the snail darters and the bark on the tree and the ozone.
They go crazy....**

(Roger Ailes, Fox News)

"It's time to take America back: It seems everybody's got a right to their habitat -- from the snail darter to the spotted owl to the fairy shrimp... *except* the habitat of U.S. citizens. Their property, their homes, their dwellings, their 'eco-systems' are up for grabs by any and every government agency and bureaucrat for any and every reason."

(National Review)

**"The Snail Darter has sort of become the shorthand
for overregulation in this country."** *(Rep. Devin Nunes, (R), California)*

"Fringe lunatics!"

(Sean Hannity)

"Homosocialism, communism!..."

(Rush Limbaugh)

// ...anti-Biblical, anti-Torah, anti-Christian... //
(Ann Coulter)

**They are worried about the snail darters and the bark on the tree and the ozone.
They go crazy....**

(Roger Ailes, Fox News)

"It's time to take America back: It seems everybody's got a right to their habitat -- from the snail darter to the spotted owl to the fairy shrimp... *except* the habitat of U.S. citizens. Their property, their homes, their dwellings, their 'eco-systems' are up for grabs by any and every government agency and bureaucrat for any and every reason."

(National Review)

**"The Snail Darter has sort of become the shorthand
for overregulation in this country."**

(Rep. Devin Nunes, (R), California)

"Fringe lunatics!"

(Sean Hannity)

"Homosocialism, communism!..."

(Rush Limbaugh)

"...anti-Biblical, anti-Torah, anti-Christian..."

(Ann Coulter)

"The same people who struggle to save the snail darter bless the Pill...and defend abortion."

(Allan Bloom)

**They are worried about the snail darters and the bark on the tree and the ozone.
They go crazy....**

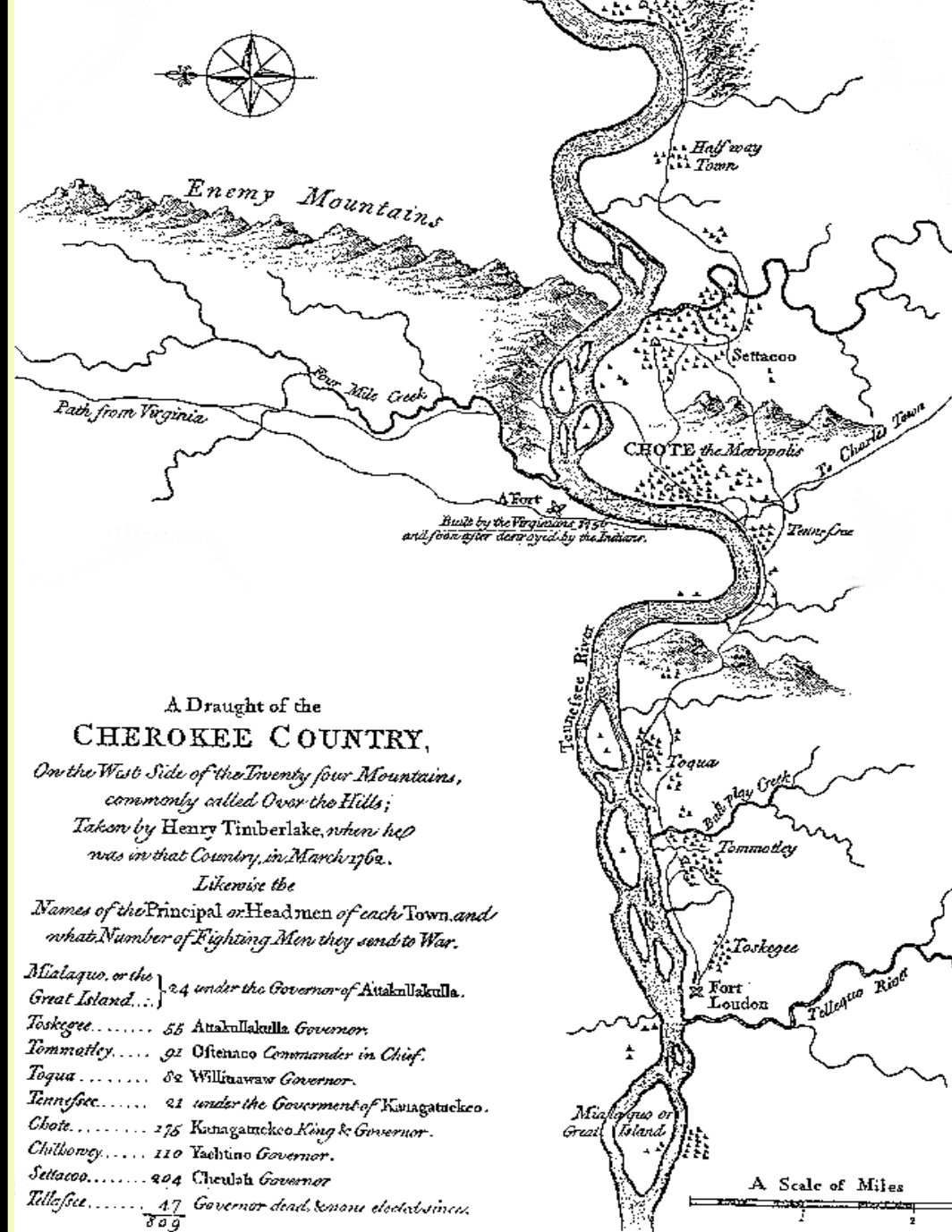
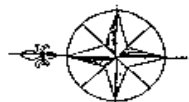
(Roger Ailes, Fox News)

" 'Snail Darter'– shorthand for *over-regulation!*"

Rep. Devin Nunes (R-California)

for overregulation in this country. *(Rep. Devin Nunes, (R), California)*





A Draught of the CHEROKEE COUNTRY,

*On the West Side of the Twenty four Mountains,
commonly called Over the Hills;
Taken by Henry Timberlake, when he
was in that Country, in March 1762.*

Likewise the

*Names of the Principal or Head men of each Town and
what Number of Fighting Men they send to War.*

Mialaguo, or the
Great Island, ... } 24 under the Governor of Attakullakulla.

Toskegee, ... 55 Attakullakulla Governor.

Tommetley, ... 91 Ostenaco Commander in Chief.

Toqua, ... 82 Williwaw Governor.

Tennifree, ... 21 under the Government of Kaniagatchee.

Chote, ... 275 Kaniagatchee King & Governor.

Chilhowey, ... 110 Yachtino Governor.

Settaco, ... 204 Cheuloh Governor

Tillafree, ... 47 Governor dead, Seneca elected since.
809



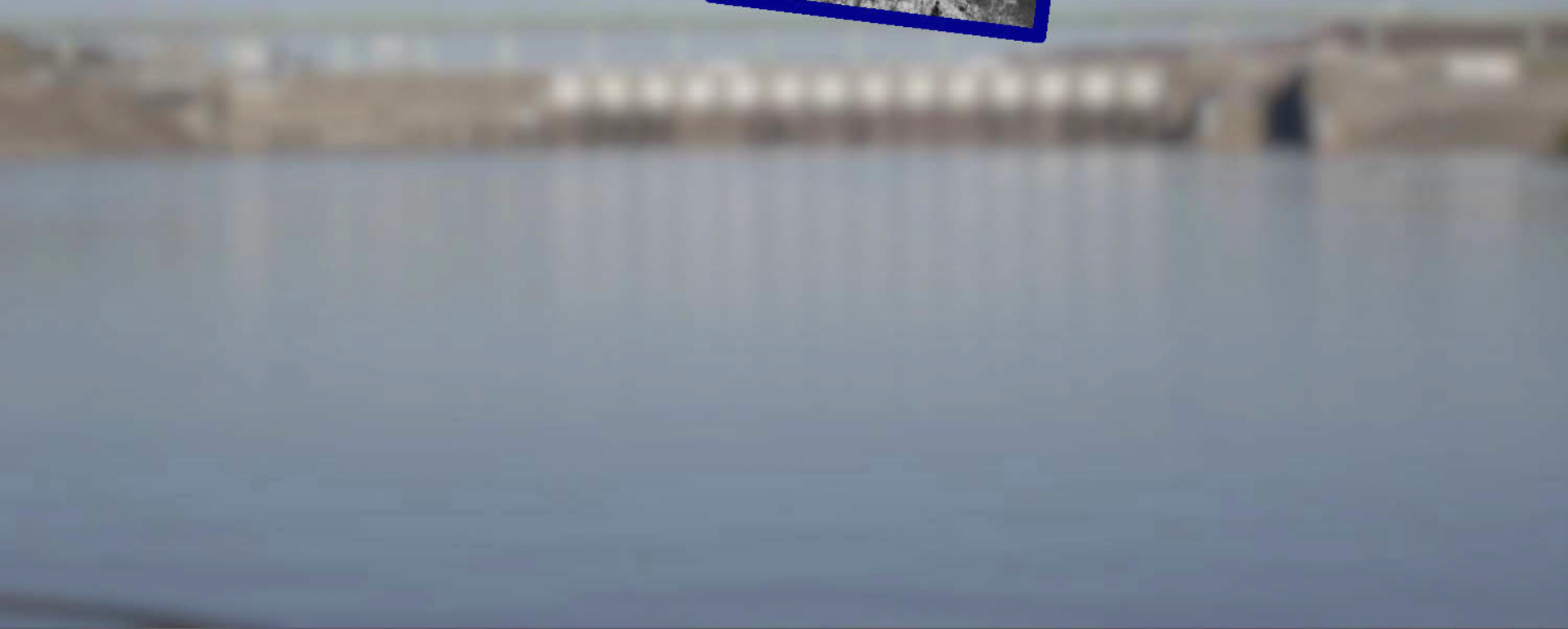
TENNESSEE RIVER SYSTEM DAMS

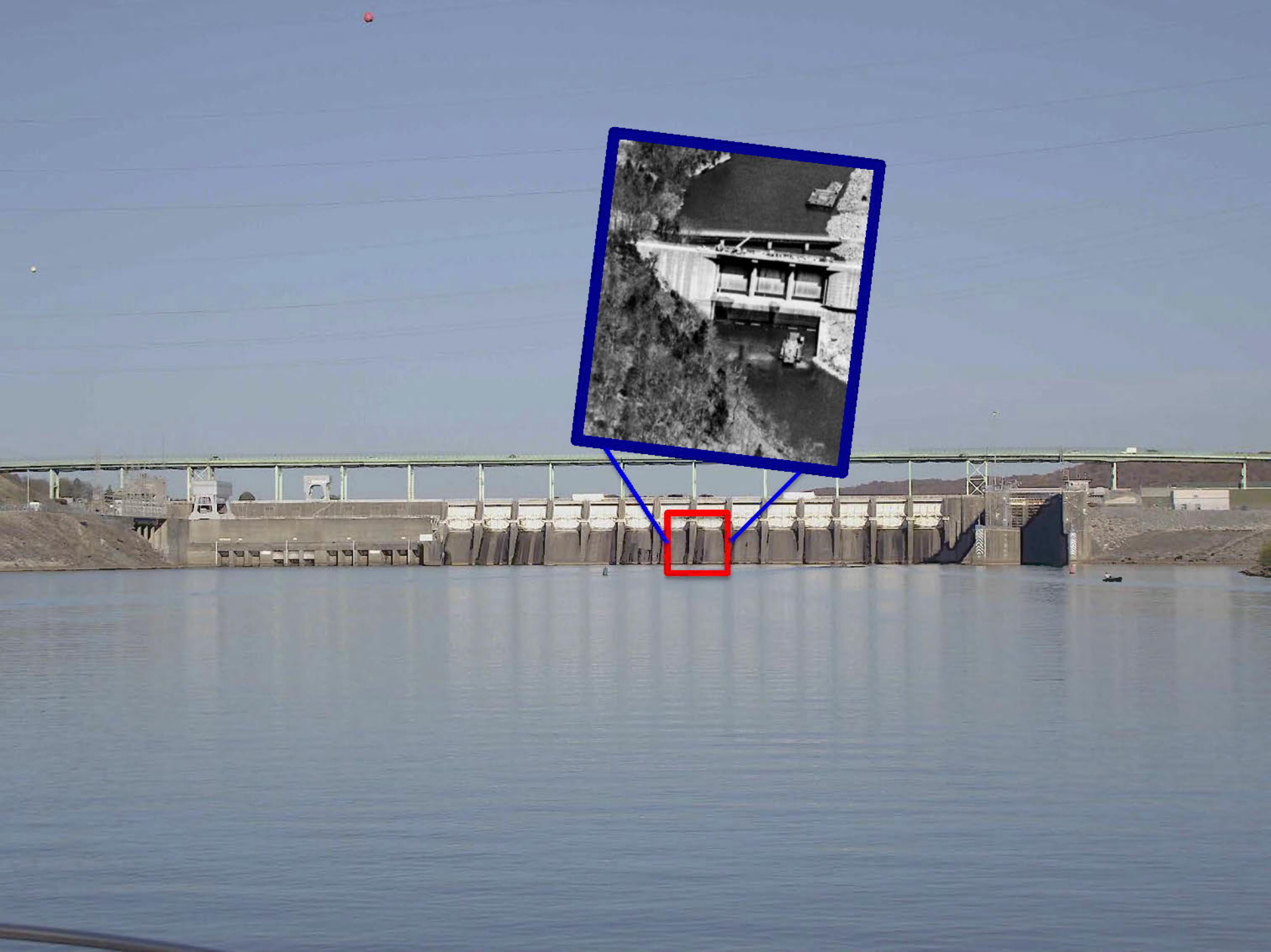


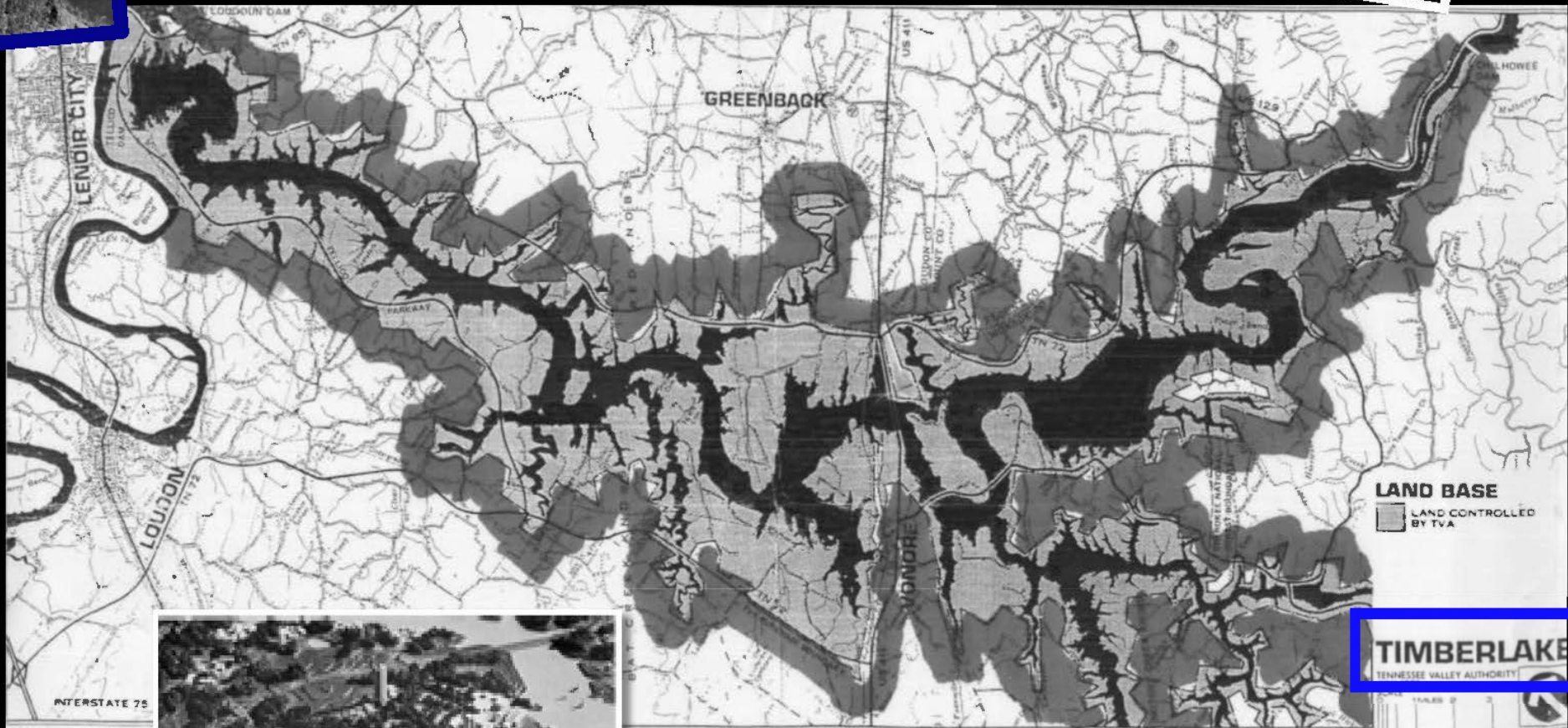
The last high-quality flowing stretch
of river: the lower 33 miles of the
Little Tennessee River

Tennessee River System, Showing more than 60 dams which have
impounded the river system from its headwaters (right) to the
Mississippi (left). From 1977 Culver Hearings, at 871.

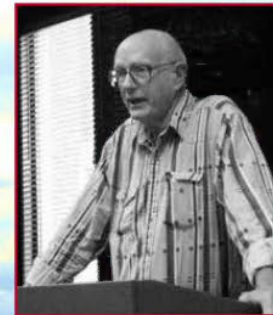












Great Smoky Mountain Natl Park

75

Knoxville

40

- RESIDENTIAL
- VILLAGE CENTER
- INDUSTRIAL
- INSTITUTIONAL
- AGRICULTURAL/FORESTRY
- RECREATIONAL
- HISTORICAL/ARCHAEOLOGICAL SITE
- TRAIL SYSTEM
- SPECIAL WETLAND WILDLIFE AREA
- ENVIRONMENTAL EDUCATION

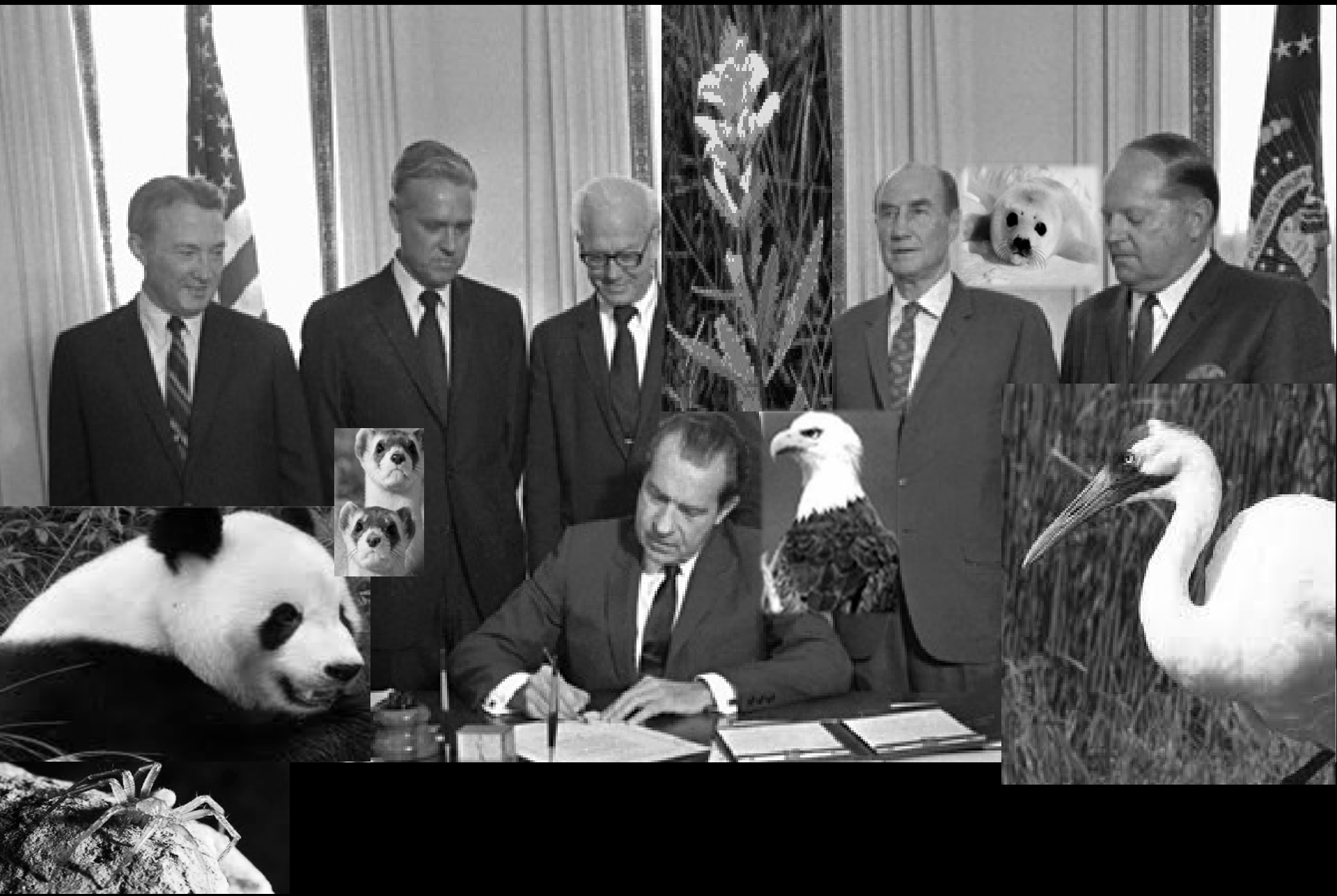
f

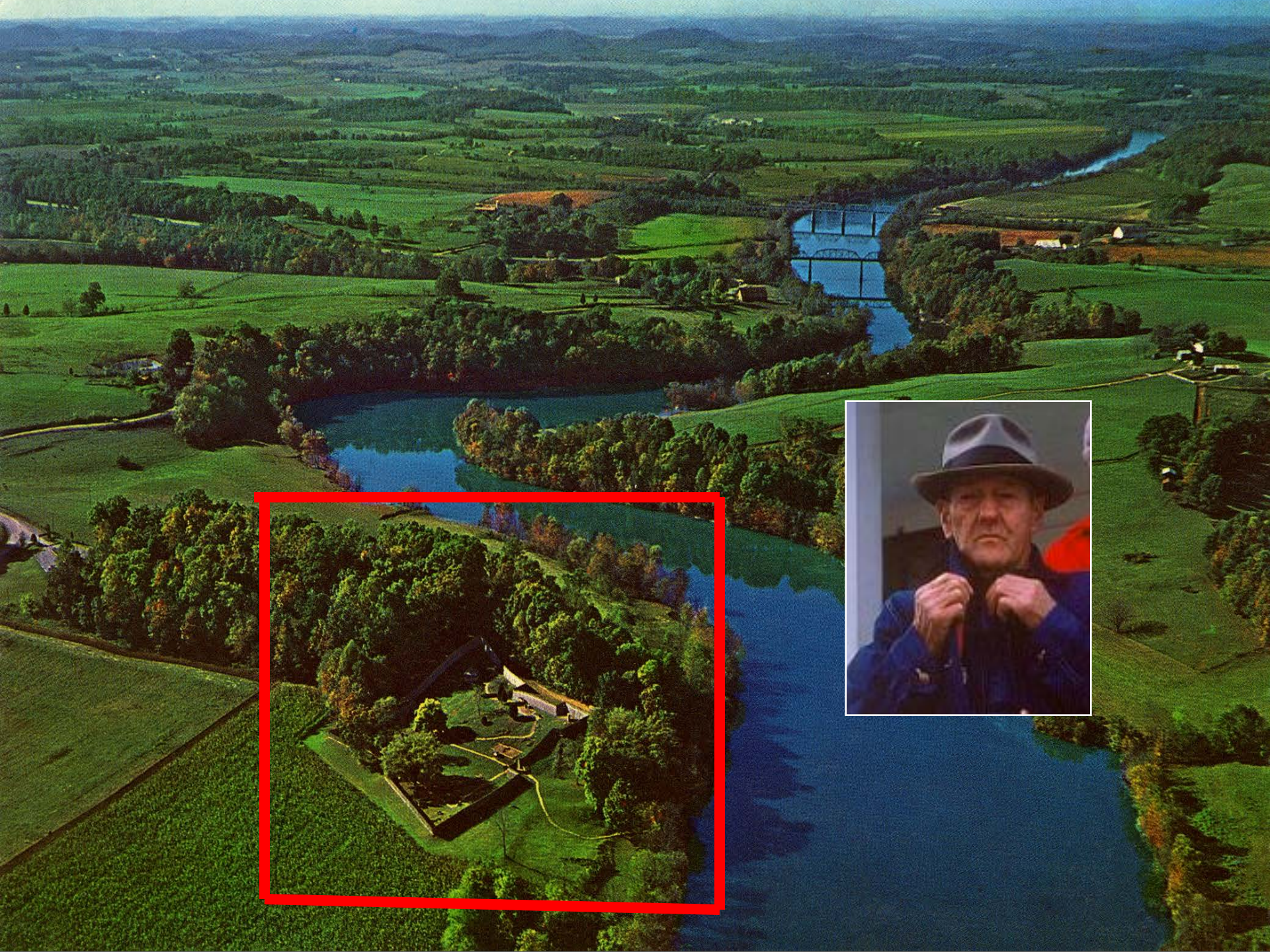
RIVER-BASED ALTERNATIVE DEVELOPMENT

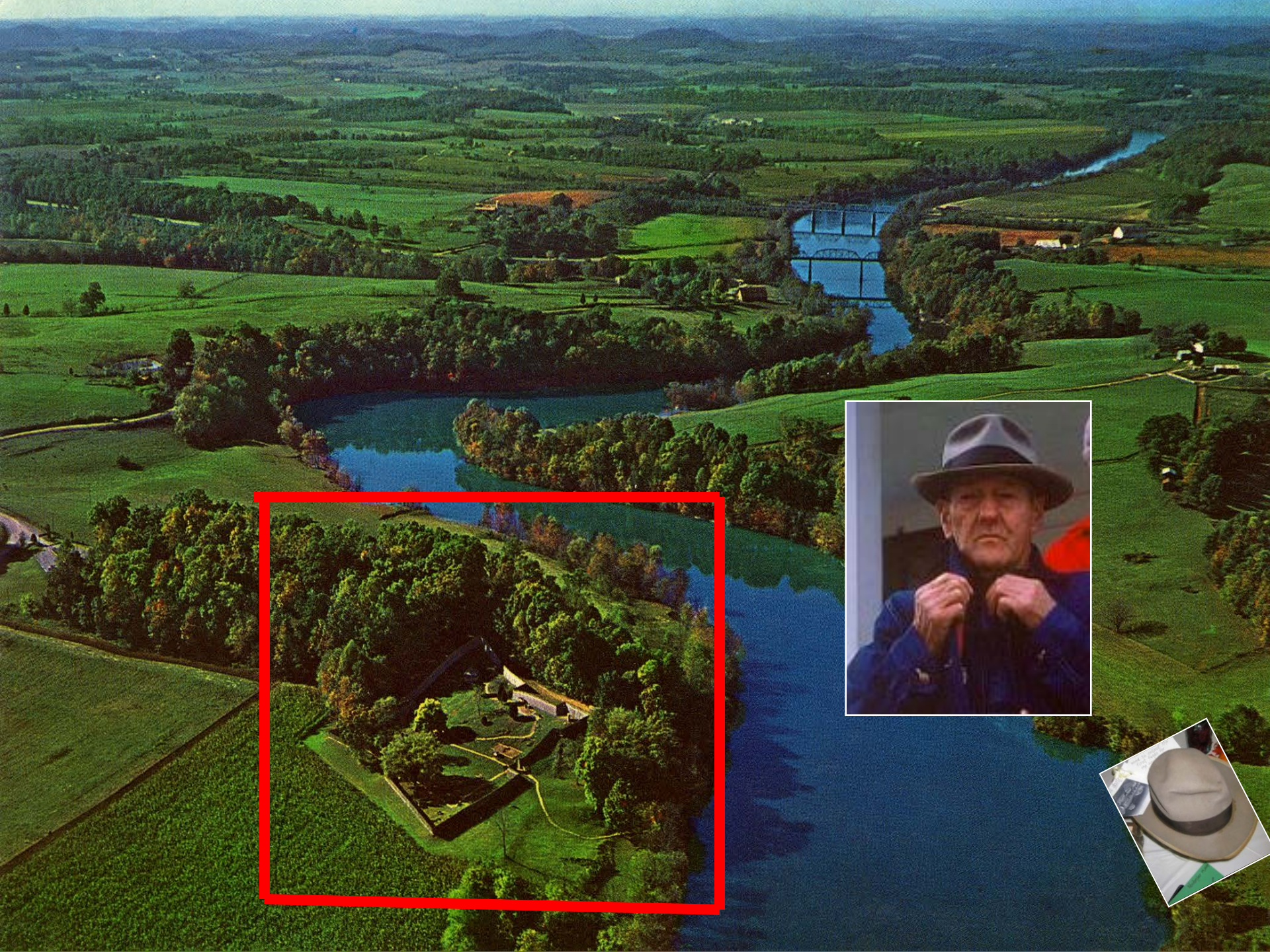
0 1/4 1/2 3/4 1 1 1/2 2 Miles

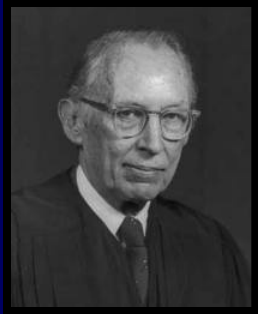
WITH ADDITION OF POTENTIAL TOURIST ROUTE
"CHEROKEE TRAIL" CONNECTING FROM
I-75 AND I-40 TO THE G.S.M.N.Park



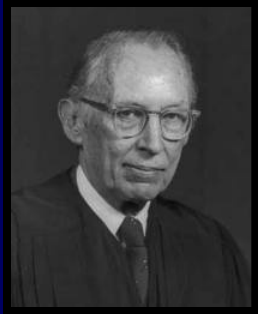








JUSTICE POWELL: “Mr. Plater? May I interrupt you right here?—what purpose is served, if any, by these little darters? *Are they used for food? ...are they suitable for bait?*”



JUSTICE POWELL: “Mr. Plater? May I interrupt you right here?—what purpose is served, if any, by these little darters? *Are they used for food? ...are they suitable for bait?*”





Stop the dam project: “*institutionalized caution*”

TVA v. Hill, et al., 437 U.S. 153

Snail Darter Case: Absurdity for Environmentalism

From Daily Mountain Eagle, Jasper, Ala.

Court Lets Small Fish Halt Dam

It is found only in that 17 no one had heard of the snail darter when the dam was scheduled.

WASHINGTON—All God's creatures, great and small, have a right to live. So the tiny minnow known as the snail darter made it in



Whether the little minnow Supreme Court may well become Noah's ark — what with the

would think this minnow was an endangered federal witness.

CREATION OF SCORES of thousands of jobs

NEXT, THE LUKFATA Dam, Oklahoma, charged by the environmentalists with jarring the leopard darter—not to mention the Lukfata Jewel Flower. Some \$2 million has been spent on planning the project.

Which brings us to the Dickey-Lincoln plant in Maine. Since 1942

Environmental overkill

Nothing can backfire so suddenly against a cause than a flagrant example of overkill. When such instances are discovered, the public can react swiftly

now, nine years after the dam was completed, all further action has been halted.

Controversy Over 3-Inch Fish Stalls the Mighty T.V.A.

earth, could not live in a reservoir and therefore qualify for the protection provided by the Endangered Species Act of 1973, ecologists and the Department of the Interior have persuaded Federal

The dispute has divided the residents of Lenoir City and other hamlets scattered along the Little Tennessee Valley. Many East Tennesseans see the dispute as a David vs. Goliath struggle, an apt

Species Act. As interpreted thus far by the courts, the act does not permit completion of a construction project that would wipe out the habitat of a living thing.

the dam by the Cherokee Indian reviewed by two Supreme justices, the project was

James Kilpatrick Snail Darter Case Example Of Extremism

WITH its opinion of June 15 in the snail darter case, the Court adds a useful chapter to the story of environmental extremism.

By B. DRUMMOND AYRES Jr.
Special to The New York Times

LENOIR CITY, Tenn., March 11—The Tennessee Valley Authority, America's great experiment in government-run utilities, has generated a



THE ***“God Committee”***

— the Cabinet-level
Endangered Species Committee

created by the 1978
Endangered Species Act
Amendments

— Chas. Schultze (Chairman, President's Council of Economic Advisors), in God Committee deliberations:

January 23, 1979: “Here is a project that is 95% complete, and if one takes just the cost of finishing it, against the total project benefits, and does it properly, it still doesn't pay,...which says something about the original design!” [laughter]



'iron triangle'





'iron triangles'



June 18, 1979

CONGRESSIONAL RECORD—HOUSE

15301

For this and other reasons, most utilities and most of those who are involved in producing electrical energy have concluded that the economic problems and costs alone are so great that nuclear power is not competitive with other modes of power generation.

Mr. Chairman, while the Three Mile Island incident is still fresh in our consciousness, the Subcommittee on Appropriations and then the Committee on Appropriations on this matter has reported a measure which provides \$719,955,000 for the further development of nuclear fission. Of that, perhaps \$187 million is justifiable because it deals with waste management and spent fuel storage.

of passenger motor vehicles \$146,177,000, to remain available until expended.

AMENDMENT OFFERED BY MR. DUNCAN OF TENNESSEE

Mr. DUNCAN of Tennessee. Mr. Chairman, I offer an amendment.

Amendment offered by Mr. DUNCAN of Tennessee: On page 28, line 18, strike the period and insert: "Provided, That notwithstanding

any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 812 feet above sea level."

1610

AMENDMENT OFFERED BY MR. ROBERTS

Mr. ROBERTS. Mr. Chairman, I offer an amendment.

The Clerk will read as follows:

Amendment offered by Mr. ROBERTS: Page 29, after the period on line 9, insert the following new sentence: "None of the funds appropriated under this paragraph may be expended by the Water Resources Council for the review of—

"(1) any preauthorization report or proposal, or

"(2) any preconstruction plan,

for a Federal or federally assisted water resources project or program or a related land resources project or program unless funds for these purposes are authorized to be appropriated by Congress in a statute enacted

Notwithstanding any law... the Corporation is directed to complete Tellico Dam

TVA Appropriations Act of 1980

are going ahead full speed, the devil take the hindmost.

I have heard people talk about how nuclear power is no more dangerous than coal. That just happens not to be true and the people who make those statements know it is not true, because what nuclear power does that coal does not do is to take the generations upon generations in the future and subject them to genetic damage, which coal does not do.

It seems to me that the American people have the right to expect that their Congress, the people whom they have elected to office, demonstrate as much concern as they themselves have about their future.

The CHAIRMAN. The time of the gentleman from New York (Mr. Weiss) has expired.

(By unanimous consent, Mr. Weiss was allowed to proceed for 2 additional minutes.)

Mr. WEISS. Mr. Chairman, I think the people of this country are being badly served by us. I think we have so brainwashed ourselves and have allowed ourselves to be so brainwashed by the nuclear advocates that we do not care any more whether the facts prove that nuclear power is worthless and worse than

There was no objection.

Mr. DUNCAN of Tennessee. Mr. Chairman, I wish to offer this amendment to the bill now before us. The purpose of my amendment is to establish in law the Congress desire to see that the Tellico Dam and Reservoir is completed and used as designed. It does not call for additional funds in this for the TVA.

My amendment would provide in legislation, what we in the Congress intend as far as the status of the project is concerned. The project is 99 percent complete, and over \$100 million has previously been appropriated by the Congress and spent on the project. My amendment would make it clear that the Congress intends for this project to be 100 percent complete and used as designed.

Mr. MYERS of Indiana. Mr. Chairman, if the gentleman will yield, the minority has reviewed the amendment and accepts it.

Mr. BEVILL. Mr. Chairman, if the gentleman will yield further, we have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee (Mr. Duncan).

The amendment was agreed to.

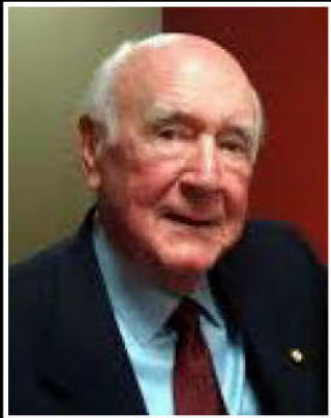
There was no objection.

Mr. ROBERTS. Mr. Chairman, I have an amendment at the desk numbered 3. This amendment provides that none of the funds appropriated for the Water Resources Council may be expended by the Council for the review of any preauthorization report or proposal or any preconstruction plan for a Federal or federally assisted water resources or related land resources plan or program unless funds for such review are authorized to be appropriated by Congress in a statute enacted after the date of enactment of this appropriations bill. Our committee is presently considering H.R. 2610, a bill to authorize the Water Resources Council for fiscal year 1980. I feel that it is necessary that Congress have an opportunity to consider this legislation and pass on it prior to the implementation of a new review function by the council. I therefore urge adoption of the amendment.

Mr. MYERS of Indiana. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Chairman, the minority has reviewed the amendment and accepts it.



UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

August 25, 1979

Members of the U.S. House of Representatives

Members of the Senate of the United States

Honorable Members:

Congress created a special seven-member Committee which I chaired. After full consideration we found that completion of the project is not justified.... The Committee

The Committee you created found...a unanimous verdict...that completion of the dam is not justified....the value of the project does not outweigh the value of the River alternatives...

available if the dam were not closed.... In the event of a large flood, the dam would be overtopped and breached, resulting in more significant destruction than if it had not been built.... I urge you to review those conclusions when you vote on this legislation to override not only the decision of the Supreme Court, but also the unanimous verdict of the Committee you created to resolve the difficult questions presented in these cases.

A handwritten signature in dark ink that reads "Cecil D. Andrus".

Cecil D. Andrus
Secretary of the Interior
Chairman, Endangered Species Committee



PHOTOS: COURTESY OF FRAN SCHEIDT

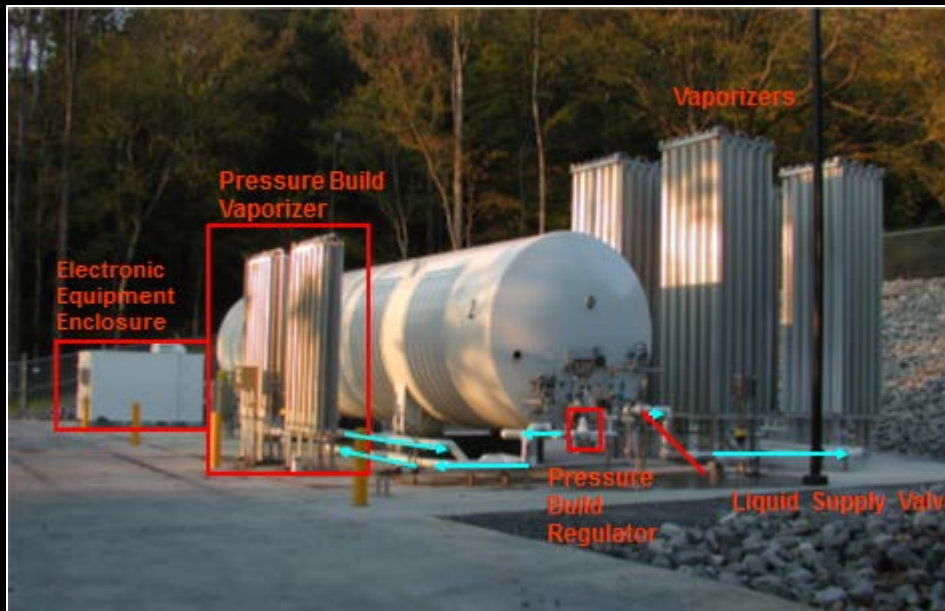






Transplant, on life support...

River bubble-aeration oxygen required each summer for snail darter life support.



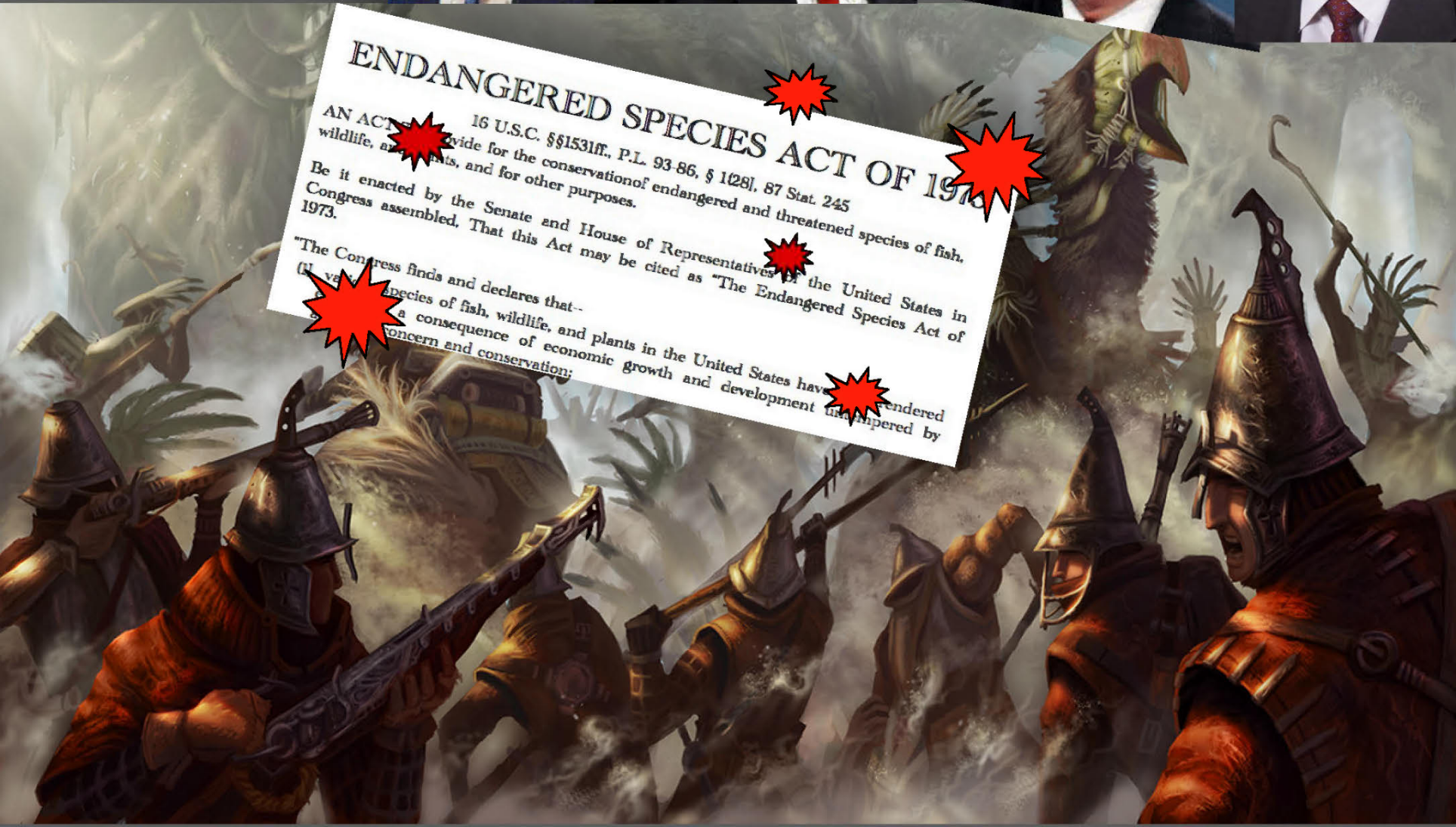


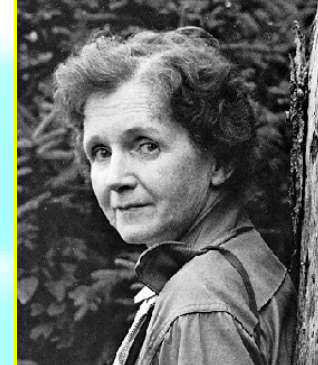
ENDANGERED SPECIES ACT OF 1973

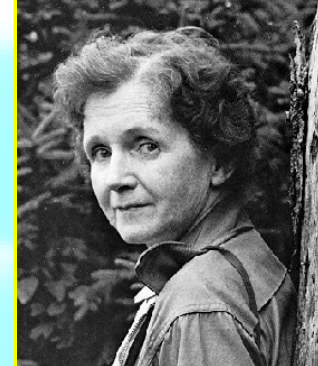
AN ACT to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as "The Endangered Species Act of 1973."

"The Congress finds and declares that--
(1) various species of fish, wildlife, and plants in the United States have become endangered or threatened as a consequence of economic growth and development untempered by
concern and conservation;











“A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy....

and a people who mean to be their own Governors must arm themselves with the power which knowledge gives.”

James Madison



ZYGMUNT J. B. PLATER

The Snail Darter and the Dam



— www.bc.edu/snaildarter

**How Pork-Barrel Politics
Endangered a Little Fish
and Killed a River**

YALE UNIVERSITY PRESS